

Message Text

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ACTION L-02

INFO OCT-01 ARA-06 ISO-00 EB-07 SS-15 INR-05 IGA-01 SP-02

CIAE-00 NSC-05 NSCE-00 NSAE-00 COME-00 OPIC-03 AID-05

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R 110206Z DEC 74

FM AMEMBASSY LIMA

TO SECSTATE WASHDC 3100

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E.O. 11652: N/A

TAGS: EDIS, EIND, EFIN, PE

SUBJECT: CERRO DISAGREEMENT WITH MINEROPERU

REF: LIMA 10295

1. EMBASSY OFFICER MET WITH ING. ALBERTO RUBINA, GENERAL MANAGER OF MINPECO (MINERO PERU COMERCIAL), ON DECEMBER 6. IN GENERAL, HE CONFIRMED GARDENER'S STATEMENTS TO AMBASSADOR. DURING CONVERSATION, FOLLOWING POINTS EMERGED:

A. CERRO IS WITHHOLDING \$6,000,000 IT OWES MINPECO; MINPECO IS WITHHOLDING \$500,000 IT OWES CERRO.

B. RUBINA WOULD NOT ADMIT THAT MINERO PERU HAD FAILED TO HONOR PRE-GREENE AGREEMENT CONTRACTS WITH CERRO SALES. HE DID CHARGE CERRO SALES WITH BYPASSING A CONTRACT WITH MINERO PERU TO SHIP ZINC CONCENTRATE TO JAPAN (SEE PARAGRAPH 6 OF LIMA 9252). THIS TRANSACTION ALSO INVOLVED ST. JOE LEAD AND CIA. MINERA SANTANDER, A MINE ST. JOE OPERATES IN PERU. ALTHOUGH RUBINA DID NOT CHARGE ST. JOE WITH VIOLATING ANY LAW, HE DID SAY IT HAD COMMITTED A "POLICY ERROR."

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C. RUBINA CONFIRMED THAT THERE IS SUBSTANTIAL AGREEMENT BETWEEN THE TWO SIDES AS SET FORTH IN DOCUMENTS GIVEN US BE GARDENER (SEE PARAGRAPH 3 REFTEL). HOWEVER, IT IS ALSO CLEAR THAT SOME IMPORTANT POINTS OF DIFFERENCES REMAIN.

D. AN INTERAGENCY COMMITTEE APOOINTED BY GOP TO LOOK INTO MATTER HAS COMPLETED ITS WORK AND RUBINA WAS TO MEET WITH IT DECEMBER 10 TO STUDY OPTIONS SUGGESTED. ONE OF THESE OPTIONS IS EXPROPRIATION OF CERRO'S REMAINING ASSETS IN PERU, INCLUDING CERRO'S INTEREST IN EIGHT SMALL MANUFACTURING COMPANIES. (RUBINA DID NOT SAY, AND EMBASSY OFFICER DID NOT ASK, WHETHER ASSETS LIABLE TO EXPROPRIATION INCLUDE CERRO'S 22-1/4 PERCENT INTEREST IN SOUTHERN PERU COPPER CORPORATION.) RUBINA VOLUNTEERED THAT HE HOPED GOP WOULD NOT HAVE TO TAKE SUCH AN "EXTREME" MEASURE.

E. EMBASSY OFFICER SAID HE TOO HOPED GOP WOULD NOT TAKE THIS STEP; HE SAID CERRO IS INTERESTED IN CONTINUING TO NEGOTIATE AND WANTS AN AMICABLE SOLUTION, RUBINA REPLIED HE WISHED THIS WERE SO BUT FOUND IT DIFFICULT TO ACCEPT, GIVEN CERRO'S PERFORMANCE TO DATE. EMBASSY OFFICER OFFERED LEND GOOD OFFICES IN URGING CERRO TO MEET AGAIN WITH RUBINA AND SAID HE WOULD BRING CONVERSATION TO ATTENTION OF AMBASSADOR AND ASSISTANT SECRETARY ROGERS. RUBINA SEEMED PLEASED BY OFFER.

2. COMMENT: WE CANNOT JUDGE WHETHER CERRO OR MINERO PERU IS MORE AT FAULT IN THIS OBVIOUSLY VERY COMPLICATED SITUATION, HOWEVER, CERRO'S RETENTION OF \$6,000,000 SEEMS AT LEAST QUESTIONABLE ON LEGAL AND PRACTICAL GROUNDS. IT ALSO APPEARS TO VIOLATE SPEIRT OF GREENE AGREEMENT SINCE IT WAS UNDERSTOOD THAT AMOUNTS OWING TO MINERO PERU/CENTROMIN ON ACCOUNT OF SALES OF METALS AND CONCENTRATES THROUGH 1973, OVER AND ABOVE THE \$38,502,440.82 TRANSFERRED TO PERU WHEN THE GREENE AGREEMENT WAS SIGNED, WOULD BE LIQUIDATED IN KEEPING WITH STANDARD COMMERCIAL PRACTICE. FROM A PRACTICAL POINT OF VIEW, CERRO'S LIMITED OFFICIAL USE

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ACTION RISKS GOADING GOP IN DIRECTION OF EXPROPRIATION. POSSIBLLITY CANNOT BE EXCLUDED THAT CERRO MIGHT ACTUALLY PREFER TO HAVE A NET \$5,500,000 IN HAND AND TAX WRITE-OFFS RATHER THAN \$10,000,000 PLUS IN ASSETS IN UNCERTAIN PERUVIAN ECONOMIC/POLITICAL CLIMATE, PARTICULARLY IF IT BELIEVES ITS INTEREST IN SOUTHERN PERU WOULD NOT BE IN JEOPARDY.

3. ACTION REQUESTED: IT WOULD BE APPRECIATED IF
DEPARTMENT COULD INFORM CERRO THAT EMBASSY HAS MET WITH
RUBINA AS CERRO REQUESTED THROUGH GARDENER. CERRO
SHOULD BE INFORMED THAT EMBASSY REITERATED CERRO'S
INTEREST IN CONTINUING TO NEGOTIATE AND EXPRESSED HOPE
THAT NO EXTREME ACTION WOULD BE TAKEN. DEPARTMENT MAY
ALSO WISH TO ASK CERRO HOW IT JUSTIFIES RETENTION OF
\$6,000,000.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: SALES, TRADE COMPLAINTS, CONTRACTS, NEGOTIATIONS, DEBTS
Control Number: n/a
Copy: SINGLE
Draft Date: 11 DEC 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: boyleja
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974LIMA10420
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740359-0068
From: LIMA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741244/aaaablon.tel
Line Count: 124
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: LIMA 10295
Review Action: RELEASED, APPROVED
Review Authority: boyleja
Review Comment: n/a
Review Content Flags:
Review Date: 20 SEP 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <20 SEP 2002 by WorrelSW>; APPROVED <18 MAR 2003 by boyleja>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CERRO DISAGREEMENT WITH MINEROPERU
TAGS: EIND, EFIN, PE, CERRO, MINEROPERU
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005